

FILED

DEC - 2 2003

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEPUTY CLERK

WILLIAM R. TAMAYO - #084965 (CA)
JONATHAN T. PECK - #12303 (VA)
MARCIA L. MITCHELL - #18122 (WA)
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office
345 Spear Street, Suite 500
San Francisco, CA 94105
Telephone No. (415) 625-5651
Fax No. (415) 356-5657

LAW OFFICE OF STEWART KATZ
STEWART KATZ, State Bar # 127425
COSTA KERESTENZIS, State Bar #186125
1001 G Street, Suite 100
Sacramento, CA 95814
Telephone No. (916) 444-5678
Fax No. (916) 444-3364

Attorneys for Plaintiff

LOGGED

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

CIVIL NO. S-02-0151-MCE JFM

Plaintiff,

STIPULATION AND ORDER FOR
DISMISSAL WITH PREJUDICE

v.

WESTERN AUTO POOL & TRANSPORT

Defendant.

C/MCE

WHEREAS, Plaintiff United States Equal Employment Opportunity Commission and Defendant Western Auto Pool & Transport, Co., have entered into a Settlement Agreement, a true and correct copy of which is attached hereto as Exhibit A, which is satisfactory to the parties, and;


WHEREAS, the Settlement Agreement states that the United States District Court for the Eastern District of California shall reserve jurisdiction pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994) and *Flanagan v. Arnaiz*, 143 F.3d 540, 543-44 (9th

1 Cir. 1998) as necessary to enforce the Settlement Agreement or to resolve any disputes that may
2 arise in the future regarding the agreement;

3 IT IS HEREBY STIPULATED by and among the parties, through their undersigned
4 counsel, subject to the provision in the preceding paragraph, that this action is dismissed with
5 prejudice.

6 IT IS FURTHER STIPULATED that this stipulation is based on Rules 41(a)(1)(ii) of the
7 Federal Rules of Civil Procedure. Each party agrees to bear its own attorneys' fees and costs.

8
9 Dated: 11/20/03


MARCIA L. MITCHELL
Senior Trial Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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11
12
13 Dated: 11-20-03


STEWART KATZ
COSTA KERESTENZIS

LAW OFFICE OF STEWART KATZ
1001 G Street, Suite 100
Sacramento, CA 95814

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17
18 **ORDERED**

19 Based upon the foregoing stipulation, and good cause appearing therefor,

20 IT IS SO ORDERED, with this Court retaining jurisdiction to enforce the Settlement
21 Agreement, in the manner set forth in the Settlement Agreement, that this action be and is hereby
22 dismissed with prejudice.

23 Dated: DEC - 1 2003


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

1 WILLIAM R. TAMAYO - #084965 (CA)
2 JONATHAN T. PECK - #12303 (VA)
3 MARCIA L. MITCHELL - #18122 (WA)
4 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
5 San Francisco District Office
6 901 Market Street, Suite 500
7 San Francisco, CA 94103
8 Telephone No. (415) 356-5122
9 Fax No. (415) 356-5046

10 Attorneys for Plaintiff

11 LAW OFFICE OF STEWART KATZ
12 STEWART KATZ, State Bar # 127425
13 COSTA KERESTENZIS, State Bar #186125
14 1001 G Street, Suite 100
15 Sacramento, CA 95814
16 Telephone No. (916) 444-5678
17 Fax No. (916) 444-3364

18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA

20 EQUAL EMPLOYMENT OPPORTUNITY)
21 COMMISSION,)

CIVIL NO. S-02-0151-MCE JFM

22 Plaintiff,

SETTLEMENT AGREEMENT

23 v.

24 WESTERN AUTO POOL & TRANSPORT)

25 Defendant.

26 I. INTRODUCTION

27 Plaintiff, EEOC, filed this action alleging that Charging Party, Jeannie Smith, was
28 subjected to unwanted sexual comments and touching during her employment at Defendant,
Western Auto and Transport. The Complaint alleges that the comments and touching created a
sexually hostile work environment resulting in Ms. Smith's constructive discharge in violation of
Title VII of the Civil Rights Act of 1964, as amended.

Settlement Agreement

1 Defendant, Western Auto Pool & Transport Company ("WAP") filed an Answer denying
2 the EEOC's allegations and asserting several affirmative defenses.

3 The EEOC and WAP want to conclude fully and finally all claims arising out of the
4 above action without the expenditure of further resources and expenses in contested litigation.
5 They enter into this Settlement Agreement to further the objectives of equal employment
6 opportunity as set forth in Title VII.

7 **II. NON-ADMISSION OF LIABILITY**

8 This Settlement Agreement is not an adjudication or finding on the merits of this case and
9 shall not be construed as an admission of a violation of Title VII by Defendant.

10 **III. GENERAL PROVISIONS**

11 1. This Court has jurisdiction over the subject matter and the parties to this action.

12 2. This Settlement Agreement constitutes a full resolution of Plaintiff's complaint in
13 Civil Action No. S-02-0151-MCE JFM and the underlying charge of discrimination filed with
14 the EEOC.

15 3. This Settlement Agreement shall become effective upon its execution by the parties.

16 4. Each party shall bear its own costs and attorney fees.

17 **IV. MONETARY RELIEF**

18 1. WAP will pay to Jeannie Smith the gross sum total of \$15,000.00 (Fifteen Thousand
19 Dollars and no cents).

20 2. The settlement amount identified in the preceding paragraph is being paid in complete
21 compromise of all disputed issues arising out of the Complaint filed in this lawsuit, Civil Action
22 S-02-0151-MCE JFM, U.S. District Court for the Eastern District of California.

23 3. The monetary relief shall be paid as follows:

24 a. Within 30 (thirty) days of the execution of this Settlement Agreement,
25 WAP will issue a check in the amount of \$15,000.00 (fifteen thousand dollars and no cents) to
26 Jeannie Smith. WAP shall make payment in the form of a business check, cashier's check, or
27 certified check.

28 b. WAP will mail the check to Marcia Mitchell, Senior Trial Attorney, for
Settlement Agreement

1 the EEOC who will forward it to Ms. Smith within ten (10) days of receipt.

2 c. Within ten (10) days of the EEOC's receipt of the aforementioned copy of
3 the check, the EEOC and Defendant shall execute and file a Stipulation and Order of Dismissal
4 of this lawsuit, attaching this Settlement Agreement as an exhibit thereto.

5 **V. NON-MONETARY RELIEF**

6 1. *Sexual Harassment*: Defendant, its officers, agents, management (including
7 supervisory employees), successors and assigns, and all those in active concert or participation
8 with them will comply with all requirements of Title VII with respect to providing a work
9 environment free from discrimination on the basis of sex and free from any action, policy or
10 practice that is intended to or known to them to have the effect of harassing or intimidating any
11 employee on the basis of his or her sex or creating, facilitating or permitting the existence of a
12 work environment that is hostile to female employees.

13 2. *Retaliation*: Consistent with 42 U.S.C. §704, Defendant, its officers, agents,
14 management (including supervisory employees), successors or assigns, and all those in active
15 concert or participation with them, agree not to engage in, implement or permit any action,
16 policy or practice with the purpose of retaliating against any current or former employee of
17 Defendant or its successor corporation because he or she opposed any practice of sex
18 discrimination or sexual harassment made unlawful under Title VII; filed a Charge of
19 Discrimination alleging any such practice; testified or participated in any manner in any
20 investigation (including, without limitation, any internal investigation undertaken by Defendant),
21 proceeding or hearing in connection with this case and/or relating to any claim of sex
22 discrimination or sexual harassment; or was identified as a possible witness in this action.

23 3. *Anti-Harassment Policy and Grievance Procedure*: Within sixty (60) days of the
24 execution of this Agreement, WAP will revise its sexual harassment policy and grievance
25 procedure such that they are minimally consistent with the standards set for in the EEOC's
26 Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors.
27

28 (a) The revised policy will be distributed to all current employees within
Settlement Agreement

1 thirty (30) days of the completion of the revisions;

2 (b) The revised policy will be distributed to all new employees at the time of
3 hire;
4

5 4. ***Anti Discrimination Training:*** WAP will develop and present to all of its
6 employees mandatory sexual harassment training, the cost of which will be borne by WAP.

7 (a) The training will take place within ninety (90) days of execution of this
8 Agreement.
9

10 (b) The training will be presented by an independent provider, emTrain, which
11 is familiar with the requirements of Title VII of the Civil Rights Act of 1964. The
12 training will include examples of the types of remarks and behavior that will not be
13 tolerated in Defendant's business locations. The training will further inform each
14 participant that he or she is responsible for knowing and complying with the contents of
15 Defendant's harassment policy.
16

17 (c) Supervisors and/or managers who are responsible for enforcing
18 Defendant's harassment policy shall also receive training on appropriate techniques for
19 investigating harassment and remedying it. The training on investigative techniques can
20 be included as a component of other harassment training.
21

22 5. ***Reporting:*** Within ten (10) days of the completion of the training required in
23 paragraphs Defendant will send the Commission a sworn verification signed by one of its owners
24 that WAP has completed the harassment training for its employees.

25 (a) WAP will submit the following in a report to the EEOC in one year: the
26 dates of the sexual harassment training along with copies of the verification forms for
27 each employee who has completed the training; copies of sexual harassment complaints
28

1 received by WAP during the preceding one-year period and a statement, as to each
2 complaint, summarizing the results of the investigation of such complaints, copies of all
3 documents relevant to the complaint and/or investigation of the complaint; a summary of
4 any complaints which were not triggered by a written complaint, and the results of
5 investigation of such complaints.
6

7 **VI. RETENTION OF JURISDICTION AND**
8 **EXPIRATION OF SETTLEMENT AGREEMENT**

9 1. This Settlement Agreement shall terminate within one year and sixty (60) days from
10 the date of execution of this Agreement, unless the EEOC petitions this court for an extension of
11 the Agreement because of noncompliance by WAP. If the EEOC determines that WAP has not
12 complied with the Settlement Agreement, the EEOC will provide written notification of the
13 alleged breach to WAP and will not petition the court for enforcement sooner than thirty (30)
14 days after providing written notification. The thirty-day period following written notice shall be
15 used by the parties for good faith efforts to resolve the issue. If the EEOC petitions the court and
16 the court finds WAP in substantial violation of the terms of the Agreement, the court may extend
17 this Settlement Agreement.
18

19 2. U.S. District Judge Morrison C. England shall retain jurisdiction over this action for
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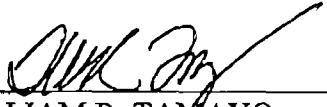
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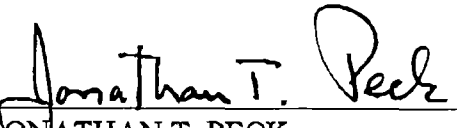
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28 Settlement Agreement

1 the purposes of enforcing the provisions of this Settlement Agreement pursuant to Kokkenen v.
2 Guardian Life Ins. Co. of Am., 511 U.S. 375, 381-82 (1994) and Flanagan v. Arnaiz, 143 F.3d
3 540, 543-44 (9th Cir. 1998) as discussed in the Stipulation and Order of Dismissal.
4

5 On behalf of Plaintiff:

6
7 
8 WILLIAM R. TAMAYO
Regional Attorney

9
10 
11 JONATHAN T. PECK
Supervisory Trial Attorney

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13 MARCIA L. MITCHELL
14 Senior Trial Attorney
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On behalf of Western Auto Pool &
Transport Co.


STEWART KATZ
COSTA KERESTENZIS
Law Office of Stewart Katz

PROOF OF SERVICE


I, the undersigned, declare that I am over 18 years of age, and not a party to or interested in the within entitled cause. I am an employee of the Law Office of Stewart Katz and my business address is 1001 G Street, Suite 100, Sacramento, CA 95814.

On November 21, 2003, I served the within **STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE with attachment** Case number CIV-S-02-151 MCE KJM, on the parties in this action by:

☒ faxing a true copy to the facsimile number below, and:
☒ placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail addressed as set forth below:
_____ causing to be delivered true copies thereof to the following agencies:

Marcia L. Mitchell
U.S. Equal Employment Opportunity Commission
345 Spear Street, Suite 500
San Francisco, CA 94105-1687
Facsimile: 415-625-5657

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 21, 2003, at Sacramento, California.



Costa Kerestenzis

United States District Court
for the
Eastern District of California
December 2, 2003

* * CERTIFICATE OF SERVICE * *

2:02-cv-00151

EEOC

v.

Western Auto Pool

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 2, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Marcia L Mitchell
Equal Employment Opportunity Commission
San Francisco District Office
350 Embarcadero Street
Suite 500
San Francisco, CA 94105-1687

AS/MCE

CF/JFM

Stewart L Katz
Law Offices of Stewart Katz
1001 G Street
Suite 100
Sacramento, CA 95814

Jack L. Wagner, Clerk

BY:



Deputy Clerk